

Hon. _____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HILDA L. SOLIS, SECRETARY OF LABOR,)	
UNITED STATES DEPARTMENT OF LABOR,)	Case No. 3:11-CV-05577
)	
Plaintiff,)	
)	
v.)	COMPLAINT
)	
BERRY GOOD FARMS, LLC, a Washington limited)	
liability company; and LEE NGUYEN, an individual,)	
)	
Defendants.)	

I

Plaintiff brings this action, pursuant to § 17 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C §§ 201-19), hereinafter called the Act, to enjoin Defendants from violating the provisions of §§ 15(a)(2), 15(a)(4) and 15(a)(5) of the Act. Plaintiff also and separately brings this action, (1) pursuant to § 16(c) of the Act, for the recovery of a Judgment against Defendants for unpaid minimum wage compensation due Defendants' employees and liquidated damages in an amount equal thereto, or, in the event liquidated damages are not awarded, (2) pursuant to § 17 of the Act, for the recovery of a Judgment restraining Defendants from withholding payment of minimum wage compensation due Defendants' employees plus pre-judgment interest computed thereon.

II

Jurisdiction of this action is conferred upon the Court by § 17 of the Act and by 28 U.S.C. §§ 1331 and 1345.

III

1. Defendant Berry Good Farms, LLC (“Berry Good”) is a Washington limited liability company with a primary place of business located at 4415 NW 199th Street, Ridgefield, WA 98642, within the jurisdiction of this Court, where it engages in growing and producing agricultural products; and, with respect to the employees listed on Exhibit A, is an employer within the meaning of the Act.

2. Defendant Lee Nguyen, an individual, is the managing partner of Berry Good, with a primary place of business located at 4415 NW 199th Street, Ridgefield, WA 98642, within the jurisdiction of this Court, where he engages in growing and producing agricultural products; and, with respect to the employees listed on Exhibit A, is an employer within the meaning of the Act as he acts directly or indirectly in the interest of Berry Good, in relation to the employees listed on Exhibit A to the Complaint, and had economic and operational control over Berry Good and its business in the state of Washington.

IV

At all times hereinafter mentioned, Defendants have employed and are employing employees in and about their aforesaid place of business in ordering, receiving, preparing, storing, handling, and selling goods and materials which have been transported, shipped, or delivered from points outside the State of Washington; in preparing, transmitting, mailing, or receiving transmissions, reports, letters, correspondence, billings, or remittances to and from points outside the State of Washington. Said employees, by reason of their activities as aforesaid, were and are engaged in commerce within the meaning of the Act.

V

At all times hereinafter mentioned, Defendants employed and are employing employees in and about their aforesaid places of business in handling, preparing, selling, or otherwise working on equipment and other goods or materials which have been transported, shipped or delivered to places within the State of Washington from places outside thereof and were produced for commerce.

VI

At all times hereinafter mentioned, the activities of Defendants (referred to in paragraph III, IV and V above) were and are related and performed through unified operation or common control for a common business purpose, and constitute an enterprise within the meaning of § 3(r)(1) of the Act.

VII

At all times hereinafter mentioned, Defendants were engaged in the operation of an enterprise whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of sales taxes at the retail level stated separately) and as such constitutes an enterprise engaged in commerce or the production of goods for commerce within the meaning of § 3(s)(A)(ii) of the Act.

VIII

Defendants repeatedly have violated and are violating the provisions of §§ 6 and 15(a)(2) of the Act by employing employees engaged in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce or in the production of goods for commerce, at an hourly rate less than the applicable federal minimum wage.

IX

1 Defendants have violated the provisions of §§ 12 and 15(a)(4) of the Act by (1) shipping or
2 delivering for shipment in commerce goods produced in an establishment situated in the United
3 States in or about which within thirty days prior to the removal of such goods therefrom oppressive
4 child labor has been employed; and (2) by employing oppressive child labor in commerce or in the
5 production of goods for commerce or in any enterprise engaged in commerce or in the production of
6 goods for commerce, as proscribed by the regulations promulgated by Plaintiff pursuant to the
7 authority granted in the Act and published in the Federal Register and known as Title 29, Code of
8 Federal Regulations, Part 570.
9

10
11 X

12 Defendants have violated the provisions of §§ 11(c) and 15(a)(5) of the Act by failing to
13 maintain, keep, make available (to authorized agents of Plaintiff for inspection, transcription, and/or
14 copying), and preserve records of employees and of the wages, hours, and other conditions and
15 practices of employment maintained, as prescribed by the regulations promulgated by Plaintiff
16 pursuant to the authority granted in the Act and published in the Federal Register and known as Title
17 29, Code of Federal Regulations, Part 516.
18

19 XI

20 Defendant violated the monetary provisions of the Act as alleged in paragraph VIII, and, as a
21 result, Defendant is liable for unpaid wages and an equal amount in liquidated damages under §16(c)
22 of the Act.
23

24
25 WHEREFORE, cause having been shown, Plaintiff prays for a Judgment against Defendants
26 as follows:
27

28 (1) For an Order pursuant to § 17 of the Act permanently enjoining and

1 restraining Defendants, their officers, agents, servants, employees, and all persons acting in his behalf
2 and interest from prospectively violating the provisions of §§ 15(a)(2), 15(a)(4) and 15(a)(5) of the
3 Act; and

4
5 (2) For an Order:

6 (a) Pursuant to § 16(c) of the Act, awarding Plaintiff money damages to cover
7 unpaid minimum wages found by the Court to be due to the present and former employees of
8 Defendants named in Exhibit A attached hereto (and for any person added thereto at a later date) and
9 an equal amount as liquidated damages; or, in the event liquidated damages are not awarded;

10
11 (b) Pursuant to § 17 of the Act, for the recovery of a Judgment restraining
12 Defendants from withholding payment of unpaid minimum wage compensation due Defendants'
13 employees, plus pre-judgment interest computed thereon.

14 (3) Awarding Plaintiff her costs of action;

15 (4) Granting Plaintiff such other and further relief as may be necessary and appropriate.

16
17 DATED this 27th day of July, 2011.

18 M. Patricia Smith
19 Solicitor of Labor

20 Lawrence Brewster
21 Regional Solicitor

22 Bruce L. Brown
23 Associate Regional Solicitor

24 Jeannie Gorman
25 Senior Trial Attorney

26 Evan Nordby
27 Trial Attorney

28 /s/ Evan H. Nordby

U.S. DEPARTMENT OF LABOR

EXHIBIT A

This information to be supplied at a later date